

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Steven Andrew Hutchens

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

April 20, 2023

Court of Appeals Case No.
22A-CR-2530

Appeal from the
Vigo Superior Court

The Honorable
John T. Roach, Judge

Trial Court Cause No.
84D01-2004-F6-1407

Memorandum Decision by Judge Foley

Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Steven Andrew Hutchens (“Hutchens”) appeals the revocation of his direct placement on work release and probation, raising a single issue: whether the trial court erroneously failed to award him credit time to which he was entitled. We find that it did, and, accordingly, reverse and remand with instructions to award the appropriate credit time.

Facts and Procedural History

[2] In 2020 and 2021, the State charged Hutchens with two sets of crimes under two different cause numbers: 84D01-2004-F6-1407 (“F6-1407”)¹ and 84D01-2106-F6-2175 (“F6-2175”).² The trial court sentenced Hutchens under both cause numbers on September 1, 2021, as part of a global plea agreement. Hutchens pled guilty to three of the seven pending charges in exchange for the dismissal of the other four. The trial court sentenced Hutchens to an aggregate of five years of home detention (two years for F6-1407 and three years for F6-2175).

[3] On January 25, 2022, Hutchens was charged again with a single count of possession of methamphetamine, a Level 6 felony, under cause number 84D01-2201-F6-271 (“F6-271”). The State filed a petition to revoke Hutchens’s home detention placement under both F6-1407 and F6-2175. Hutchens pled guilty to

¹ Possession of methamphetamine, a Level 6 felony; possession of a syringe, a Level 6 felony; and possession of paraphernalia, a Class C misdemeanor.

² Possession of methamphetamine, a Level 6 felony; driving while suspended, a Class A misdemeanor; possession of paraphernalia, a Class C misdemeanor; and operating without a license, a Class C misdemeanor.

the new charge and admitted that he had violated the terms of his placement from the prior two cases. On March 28, 2022, the trial court sentenced Hutchens to a two year suspended-sentence in F6-271, to be served consecutive to the sentences in the prior two cases. The trial court revoked the home detention placement in both of those cases and ordered Hutchens to serve 126 days of his previously suspended sentence in the Vigo County Jail. According to the trial court, Hutchens had already been in the jail for 63 days due to the charges in F6-271.³ Thus, he was awarded 126 days of credit time and ordered to serve the balance of his sentence in a work release program.

[4] On August 23, 2022, the State once again filed a petition to revoke Hutchens's placement, this time because of a series of violations of the terms of the work release program: possession of tobacco, possession of a syringe, multiple unauthorized absences, and multiple positive drug screens. On September 26, 2022, the trial court granted the State's petition and revoked Hutchens's placement in all three cases. The trial court ordered Hutchens to serve all three of his sentences in the Department of Correction: an aggregate of seven years imprisonment. The trial court further awarded Hutchens 770 days of credit time but did not include the 126 days of credit time contemplated in the March

³ The trial court appears to have miscalculated the date range here. It awarded credit time from January 24, 2022, to March 27, 2022. The record reflects, however, that Hutchens was not re-arrested until January 25, 2022. The error does not seem to have affected the calculation of the days incarcerated, which the trial court correctly determined to be sixty-three. The end date of the range makes sense, given that the order was signed on March 28, 2022. For purposes of appeal, however, we note that Hutchens was not returned to work release until April 4, 2022, suggesting that April 3, 2022, is the relevant end date for purposes of calculating the correct credit time.

28, 2022, order, or the days between the order and Hutchens’s return to work release. This appeal ensued.

Discussion and Decision

[5] “[T]ime spent in confinement before sentencing applies toward a prisoner’s fixed term of imprisonment.” *Robinson v. State*, 805 N.E.2d 783, 789 (Ind. 2004). “Pre-sentence imprisonment is a form of punishment and credit time statutes, as remedial legislation, should be liberally construed in favor of those benefited by the statute.” *House v. State*, 901 N.E.2d 598, 601 (Ind. Ct. App. 2009) (citing *Williams v. State*, 759 N.E.2d 661, 664 (Ind. Ct. App. 2001)) (internal quotations omitted); *see also* Ind. Code § 35-50-6-3.1. “Because pre-sentence jail time credit is a statutory right, trial courts have no discretion in awarding or denying that credit.” *Glover v. State*, 177 N.E.3d 884, 885–86 (Ind. Ct. App. 2021) (citing *Perry v. State*, 13 N.E.3d 909, 911 (Ind. Ct. App. 2014)), *trans. denied*.

[6] Hutchens argues that the trial court erred in not awarding him 138 days for his period of incarceration spanning January 25, 2022, to April 3, 2022. The State argues that Hutchens has already received the benefit of 126 of those days, and therefore, the trial court did not err when it omitted them from its September 26, 2022, order. We agree with Hutchens.

[7] First, the State concedes that Hutchens is entitled to credit time for the period between the March 28, 2022 order and the date Hutchens was returned to work release. The State calculates the end date as April 4, 2022, but we agree with

Hutchens that the correct date is April 3, 2022. Thus, Hutchens is entitled to six days actual time credit as well as six days good time credit for that period. The trial court erroneously excluded those twelve days from its calculations.

[8] The trial court further erroneously excluded the 126 days contemplated by the March 28, 2022 order. The State mischaracterizes the trial court's order when it asserts that "[t]he trial court imposed the balance of all three previously-suspended sentences to the DOC" Appellee's Br. p. 6. It is true that, at the sentencing hearing, the trial court remarked "the balance, all of your sentences, is hereby revoked." Tr. Vol. II. p. 23. The trial court's subsequent comments and sentencing order make clear, however, that it was imposing the *original sentences in their entirety*. The trial court's sentencing order revoked:

defendant's direct placement of two (2) years in Cause No. 84D01-2004-F6-1407. Consecutive, in Cause No. 84D01-2106-F6-2175, the court revokes the defendant's direct placement of two (2) years on Count 1, followed by one (1) year on Count 2. Consecutive, in Cause No. 84D01-2201-F6-0271, the court revokes the defendant's two (2) years of probation, for an executed sentence of seven (7) years to be served in the Indiana Department of Correction.

Appellant's App. Vol. II p. 90. These are the full original sentences. Thus, as a matter of statutory right, Hutchens is entitled to credit time for all pre-sentence incarceration. We reverse and remand with instructions to vacate the sentencing order, and enter a new sentencing order and abstract of judgment awarding Hutchens an additional 138 days of credit time.

[9] Reversed and remanded with instructions.

Vaidik, J., and Tavitas, J., concur.